



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL
LITIGATION BUREAU

Writer's Direct Dial: (212) 416-8029

By ECF

September 22, 2021

Hon. Ann M. Donnelly
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *John Does, et al. v. Hochul, et al.*
21-cv-5067 (E.D.N.Y.) (AMD-TAM)

Dear Judge Donnelly:

This Office represents Governor Kathy Hochul and Health Commissioner Howard Zucker (the "State Defendants") in the above-referenced matter. The State Defendants respectfully oppose Plaintiffs' motion to set an expedited briefing schedule and hearing on their motion for a preliminary injunction in this case (ECF No. 37).

Plaintiffs are five anonymous persons in the healthcare industry who challenge the State Defendant's mandatory vaccine policy, which requires all employees of hospitals, nursing homes, diagnostic and treatment centers and other health care facilities to receive their first vaccination against COVID-19 by September 27, 2021. Plaintiffs object to the vaccination requirement because it provides for an exemption based on medical reasons, but not for religious reasons, and thus allegedly violates their rights under, *inter alia*, the First Amendment Establishment Clause. By Memorandum and Order dated September 14, 2021, Judge Eric Komitee denied Plaintiffs' application for temporary restraining order as moot in light of a statewide temporary restraining order issued against the vaccine mandate by Judge David Hurd in *Dr. A v. Hochul* (N.D.N.Y. 1:21-CV-1009) (ECF No. 35).

Plaintiffs' contentions regarding an urgent need for this case to be expedited are unfounded. Indeed, such claims are undermined by Plaintiffs' own delay of a week to bring this application after Judge Komitee's Memorandum and Order was issued. In any event, Judge Hurd has extended the statewide temporary restraint against the COVID-19 vaccine mandate issued in *Dr. A v. Hochul*, until October 12, 2021 (*see* Order dated September 20, 2021, attached as "Exhibit A"). Hence, the State Defendants are already enjoined from "enforcing, threatening to enforce, attempting to enforce, or otherwise requiring compliance with" the COVID-19 vaccine mandate until further rulings from the court on or before October 12, 2021.

Further, in a case entitled *We the Patriots USA v. Hochul* (E.D.N.Y., Judge Kuntz, Case No. 1:21-cv-4954) the plaintiffs have brought a motion for an emergency injunction pending appeal, and that motion is scheduled to be fully briefed by September 30, 2021 (*see* Scheduling

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Order, attached as “Exhibit B”). If the Second Circuit were to grant that motion, any preliminary injunction against the vaccine mandate in this case would likely be moot or unnecessary.

Under these circumstances, we respectfully propose the following briefing schedule: State Defendants will serve opposition papers by October 5, 2021, Plaintiffs will serve reply papers by October 12, 2021, and the Court will schedule a hearing thereafter. Plaintiffs will not be prejudiced if the State Defendants are given a reasonable opportunity to respond to the motion for preliminary injunction.

Thank you for Your Honor’s consideration of this matter.

Respectfully submitted,

/s/ Seth J. Farber /

Seth J. Farber
Assistant Attorney General
Seth.Farber@ag.ny.gov

cc: All Counsel (via ECF)